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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

JESSICA LEE, individually and on behalf
of a class of similarly situated individuals,

Plaintiff,

v.

STONEBRIDGE LIFE INSURANCE
COMPANY, a Vermont corporation,

Defendant.

Case No.

CV 11 00043

CLASS ACTION COMPLAINT FOR:

**VIOLATION OF THE TELEPHONE
CONSUMER PROTECTION ACT,
47 U.S.C. § 227.**

DEMAND FOR JURY TRIAL

Plaintiff Jessica Lee ("Plaintiff" or "Lee") brings this Class Action Complaint against Stonebridge Life Insurance Company ("Defendant" or "Stonebridge") to stop Defendant's practice of making unsolicited text message calls to cellular telephones, and to obtain redress for all persons injured by its conduct. Plaintiff, for her Class Action Complaint, alleges as follows upon personal knowledge as to herself and her own acts and experiences, and as to all other matters, upon information and belief, including investigation conducted by her attorneys.

NATURE OF THE CASE

1. Wireless spam is a growing problem in the United States. According to a recent study conducted by the Pew Research Center, "Spam isn't just for email anymore; it comes in the form of unwanted text messages of all kinds—from coupons to phishing schemes—sent directly to user's cell phones." In fact, "57% of adults with cell phones have

CLASS ACTION COMPLAINT

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ORIGINAL
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JAN - 4 2011
RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

3. By effectuating these unauthorized text message calls (hereinafter, “wireless spam”), Defendant has caused consumers actual harm, not only because consumers were subjected to the aggravation that necessarily accompanies wireless spam, but also because consumers frequently have to pay their cell phone service providers for the receipt of such wireless spam.

5. On behalf of the class, Plaintiff seeks an injunction requiring Defendant to cease all wireless spam activities to her and the proposed class as well as an award of actual and statutory damages to the class members, together with costs and reasonable attorneys' fees.

6. Plaintiff Lee is a citizen of the State of Virginia.

JURISDICTION AND VENUE

5 9. Venue is proper in the Northern District of California under 28 U.S.C.
6 § 1391(b) because the text message calls at issue were transmitted nationwide from a
7 telephone number located in this District.

8 10. This Court has personal jurisdiction over the Defendant under Cal. Code Civ.
9 Proc. § 410.10 because certain of the acts alleged herein were committed in California (and,
10 specifically, the Northern District of California).

INTRADISTRICT ASSIGNMENT

11. Some or all of the text message calls at issue were transmitted nationwide from telephone numbers located in this District, including 650-283-0793 which contains an area code encompassing San Mateo and northern Santa Clara counties. Under Local Rule 3-2(c), this civil action should be assigned to either the San Jose division or San Francisco division of the Northern District of California.

CONDUCT COMPLAINED OF

18 12. In recent years, marketers who often have felt stymied by federal laws
19 limiting solicitation by telephone, facsimile machine, and e-mail have increasingly looked to
20 alternative technologies through which to send bulk solicitations cheaply.

13. One of the newest types of such bulk marketing is to advertise through Short Message Services, commonly know as text messages. The term “Short Message Service,” “SMS,” or “text message” describes a messaging system that allows cellular telephone subscribers to use their cellular telephones to send and/or receive short text messages, usually limited to 160 characters.

14. An “SMS message” is a text message call directed to a wireless device through the use of the telephone number assigned to the device. When an SMS message call

1 is successfully made, the recipient's cell phone rings, alerting him or her that a call is being
2 received.

3 15. Unlike more conventional advertisements, SMS message calls, and
4 particularly wireless spam, can actually cost their recipients money, because cell phone users
5 must frequently pay their respective wireless service providers either for each text message
6 call they receive or incur a usage allocation deduction to their text plan, regardless of whether
7 or not the message is authorized.

8 16. Beginning in at least 2010 and continuing for months thereafter, Defendant
9 Stonebridge and/or its agents caused mass transmissions of wireless spam to the cell phones
10 of what they hoped were potential customers of Stonebridge's insurance products.

11 17. For instance, on or about November 28, 2010, Plaintiff's cell phone rang,
12 indicating that a text call was being received.

13 18. The "from" field of the transmission was identified as "650-283-0793," which
14 is a dedicated telephone number operated by Defendant's agents that transmits text messages
15 *en masse* through devices known as modem banks and/or carrier gateways. The body of the
16 text message read:

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THANKS 4 VISITING OUR WEBSITE PLEASE
CALL 877-711-5429 TO CLAIM YOUR \$100
WALMART GIFT CARD VOUCHER!
REPLY STOP 2 UNSUB

19 19. As with other forms of advertising, marketers control the content that appears
20 in the body of an SMS message in order to maximize the effectiveness of the advertisement.
21 In certain cases, marketers employ misleading or deceptive content in the body of the
22 message in order to increase the likelihood that the recipient will respond to the message.

23 20. In the instant matter, Defendant and/or its agents reference the name of
24 Walmart,¹ a well-known and prevalent company, in the body of the message and promise a
25 \$100 gift card in order to induce a response from recipients. Calling the toll-free telephone
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27 ¹ Walmart is a registered trademark of Walmart Stores, Inc. Plaintiff's investigation to date has not
28 revealed any involvement by Walmart Stores, Inc. in the scheme described herein.

1 number contained in the above text message reveals the true purpose of the marketing
2 message: the promotion of Stonebridge's insurance products and services.

3 21. When recipients of the above text message call the toll-free telephone number
4 identified in the body of the message, Defendant and/or its agents present offers from a
5 uniform script for Stonebridge insurance products. The offers presented include those for
6 Stonebridge life insurance products and an invitation to receive a return telephone call, or
7 "follow-up" call, from a Stonebridge representative.

8 22. When recipients of the above text message accept the invitation to receive a
9 follow-up call from Stonebridge, such a call is received shortly thereafter, including from
10 telephone number 312-436-1157, wherein further offers for Stonebridge insurance products
11 are presented, including the opportunity to purchase a Stonebridge life insurance policy and
12 to register in "The Stonebridge Life Insurance Company \$5,000 Sweepstakes," the official
13 rules for which may be found at the following website operated by Defendant's agent
14 Ventura Associates, Inc.: www.stonebridgeshoppingspree2.com.

15 23. When a consumer dials the telephone numbers from which the follow-up calls
16 originate, including the telephone number 312-436-1157, the following automated message is
17 played:

18 HELLO! YOU'VE RECEIVED A CALL FROM A TELEPHONE
19 SALES AGENCY WITH A VALUABLE OFFER FROM
20 STONEBRIDGE LIFE INSURANCE COMPANY. WE
APOLOGIZE FOR ANY INCONVENIENCE.

21 TO HEAR ABOUT SOME OF THE PRODUCTS
22 AVAILABLE THROUGH STONEBRIDGE LIFE
23 INSURANCE COMPANY AND ITS AFFILIATED
COMPANIES, CALL 1-800-527-5717.

24 IF YOU WOULD LIKE TO BE PLACED ON STONEBRIDGE
25 LIFE INSURANCE COMPANY'S DO NOT CALL LIST
26 FOR ALL OFFERS, PLEASE PRESS 2. OTHERWISE,
THANK YOU, AND HAVE A GREAT DAY.

24. Defendant's and/or its agents' use of dedicated telephone numbers enabled Defendant's mass transmission of wireless spam to a list of cellular telephone numbers, including that belonging to Plaintiff and the proposed Class.

25. At no time did Plaintiff consent to the receipt of the above-referenced text message or any other such wireless spam text message from Defendant.

CLASS ALLEGATIONS

26. Plaintiff brings this action on behalf of herself and a class (the "Class") defined as follows: All persons in the United States and its territories who received one or more unauthorized text message advertisements on behalf of Stonebridge.

27. Upon information and belief, there are over 5,000 members of the Class such that joinder of all members is impracticable.

28. Common questions of law and fact exist as to all members of the Class and such questions predominate over questions affecting Plaintiff or individual members. Common questions for the Class include:

- (a) Does the wireless spam Defendant distributed violate the TCPA?
- (b) Are the Class members entitled to treble damages based on the willfulness of Defendant's conduct?

29. Plaintiff will fairly and adequately protect the interests of the Class, her claims are typical of the claims of the members of the Class, and she has retained counsel competent and experienced in similar class action litigation.

30. A class action is superior to other available methods for fairly and efficiently adjudicating this controversy because, among other things, (a) joinder of all members of the Class is impracticable, and (b) many members of the Class cannot vindicate their rights by individual lawsuits because their damages are small relative to the burden and expense of litigating individual actions.

COUNT I

(Violation of the TCPA, 47 U.S.C. § 227: On behalf of the Class)

33. These text calls were made *en masse* through the use of a dedicated telephone number without the prior express consent of Plaintiff and the Class.

34. Defendant's misconduct was willful and knowing, and the Court should, pursuant to section 227(b)(3)(C), treble the amount of statutory damages recoverable by Plaintiff and members of the Class.

WHEREFORE, Plaintiff Jessica Lee, on behalf of herself and the Class, prays for the following relief:

- ## JURY DEMAND

CLASS ACTION COMPLAINT

1 January 4, 2011

2 **JESSICA LEE**, individually and on behalf of a
3 class of similarly situated individuals

4 By: /s/ Sean Reis 

5 One of Plaintiff's attorneys

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